

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

R. L. MCCARTHY & SON, a subsidiary of ATLANTIC
EXPRESS TRANSPORTATION GROUP, INC.

Employer¹

and

AMALGAMATED TRANSIT UNION, LOCAL 448

Petitioner²

Case 1-RC-21915

DECISION AND ORDER³

The Employer, a corporation with an office and principal place of business in Brookfield, Massachusetts, is engaged in the provision of school and charter transportation services. The parties agree that any unit found appropriate should contain the Employer's school bus drivers, spare drivers, and mechanics. While the Petitioner

¹ The name of the Employer appears as amended at the hearing.

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³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

seeks a unit limited to these classifications, the Employer contends that any appropriate unit must also include its van drivers and its escort employees.

For the reasons discussed below, I conclude that the Employer's contention is correct, and because the Petitioner is unwilling to proceed to an election except in a unit confined to the bus drivers, spare drivers, and mechanics, I shall dismiss the petition.

The Employer's principal business consists of the provision of school transportation services. The Employer has two terminals, one located in Brookfield and the other in Hubbardston, Massachusetts. While both these locations include parking lots, the Employer has four ancillary parking lots in the surrounding area.

Currently, the Employer services six Massachusetts school districts. Both school buses and vans are used in this enterprise. The Employer also performs charter work. During the school year, the charter work appears to be mainly confined to the weekends. Charter work also employs both vans and buses. The Employer's school transportation services continue during the summer months, but on a reduced scale and, accordingly, for the most part it is vans, not buses, which are used in this work.

There are approximately 100 van drivers, 85 school bus drivers, 7 spare drivers, 6 escorts, and 8 mechanics. The license required of the school bus drivers entitles them to drive vans as well, but the license required to drive a school van does not entitle the holder to drive a school bus. The bus drivers are not all identically qualified, as special licensure is required to drive certain of the Employer's buses that have air brakes, and not all the bus drivers have this licensure.

Both bus drivers and van drivers work an average of 25 hours per week and their starting and stopping times are the same. They report through the same chain of command, which runs from the assistant terminal manager, the terminal manager, and the vice-president. They also have the same responsibilities with respect to the students they respectively convey, including using the same disciplinary forms. When a bus or van is involved in an accident or breakdown, the Employer sends vehicles of either description to render aid as the exigencies of the situation dictate. Some buses and vans work together on a daily basis. This occurs in situations in which the buses are unable to reach the points where the students are to be picked up or dropped off. In these situations, vans are used to make these pickups and drop-offs and then transfer the students to or from a waiting bus, as the case may be.⁴ The bus drivers and the van drivers communicate with each other over the Employer's two-way radio to mutually advise each other of road conditions, to render and receive aid in the case of accidents and breakdowns, and to affect the transfer of passengers between buses and vans.

⁴ The record does not reveal exactly how many of these so-called "feeding" vans the Employer uses, except that three of them are in use in one of the six school districts currently being serviced by the Employer.

Bus and van drivers are all dispatched by the Employer's single dispatcher and those who fill in for her. About half the van drivers service the same schools serviced by the bus drivers. At some schools, the van drivers and the bus drivers park their vehicles at the same location and are free to socialize with each other when the students are not present.

Bus drivers and van drivers make equivalent inspections of their vehicles for safety purposes at the beginning and end of their shifts. Both the bus and van drivers are allowed to take their vehicles home with them at the end of the day. However, in the nature of things, it is much more common for van drivers to park their vehicles at their residences overnight. But the buses and vans that are parked at the Employer's various lots are parked together.

All the spare drivers are licensed to drive school buses. They regularly drive both buses and vans as required by the absence of permanently assigned drivers and they sometimes drive both vehicles during the same day.

On occasion during the regular school year, regular bus drivers will drive a van. As already noted, during the summer season, the Employer uses vans almost exclusively to service the schools that are open. The vans used to service schools during the summer are for the most part driven by the bus drivers and not those drivers who only hold van licensure.

It has sometimes, although not frequently, been the case that a driver who regularly drove a van but had a license to drive a school bus has driven a school bus for the Employer to fill in for an absent bus driver.⁵ Also, while in hiring for bus driver positions the Employer prefers persons who already have a license to operate a school bus, it has on infrequent occasions trained van drivers who have then obtained such a license and become a bus driver for the Employer.

The Employer's mechanics service both the vans and the buses.

By law, the bus drivers are required to receive eight hours of in-service training annually and the van drivers four hours. The Employer appears to provide some additional annual training as well. The Employer claims that insofar as this in-service training covers matters, such as CPR, first aid, and defensive driving, which are relevant to both bus drivers and van drivers, its classes are attended jointly by both groups of employees. However, a driver called by the Union who has been with the Employer for nine years testified that in her experience only CPR training is given jointly to the bus and van drivers.

The average wage of the bus drivers is \$14.00/hour, while that of the van drivers is \$10.00/hour. However, the pay levels are not uniform within either classification, as wage rates for both classifications vary depending on the Employer's contract with the

⁵ Currently, the Employer has seven employees whose regular position is that of van driver, but who are licensed to drive school buses.

particular school district involved. The three classifications of drivers, escorts, and mechanics all have the same health, life, and disability insurance options and have the same holiday entitlement.

Neither bus drivers, spare drivers, nor van drivers wear uniforms.

With apparently infrequent exceptions, the escorts are normally assigned to vans. Their presence is typically required because of some physical disability or behavior problem, and their general task is to assist the driver in maintaining order.

Analysis

For the following reasons, I conclude that the bus drivers, spare drivers, and mechanics cannot constitute a unit appropriate for bargaining unless the van drivers and escorts are included with them.

The bus drivers and van drivers perform the same functions: they transport students, make charter runs, and perform equivalent inspection functions. They both work the same average number of hours and have the same schedules. They report through the same chain of command. Their benefits are the same. In addition to this similarity in function and working conditions, there is a high degree of functional integration of the work of these two groups of employees. They communicate with each other for business purposes over the Employer's two-way radio. They come to each other's aid in case of breakdowns and accidents. Some of them transfer passengers between each other on a daily basis. Although not a frequent occurrence, van drivers are promoted to bus drivers. Bus drivers and van drivers take at least some of their in-service training together. However infrequently, during the regular school year some drivers who normally drive buses also drive vans, while some drivers who normally drive vans also drive buses. In the summertime, the Employer's vans are driven almost exclusively by its bus drivers. The spare drivers regularly drive both vehicles. In these circumstances, if the unit placement of the Employer's drivers were based on either licensure or the vehicle being driven at any particular time, either the same work or the same employees would, to a degree which cannot be deemed negligible, move in and out of the unit. Either result would be arbitrary and disruptive. In light of the above considerations, the community of interest among all the Employer's drivers is such that they cannot be separated for collective bargaining purposes. *Transerv Systems, Inc.*, 311 NLRB 766 (1993)(Bicycle messengers do not share a sufficiently distinct community of interest from drivers as to warrant a separate unit.)

The escorts work closely together with both the van and bus drivers, are subject to the same chain of command, and have the same benefits. Accordingly, they also must be included in the unit. *Transerv Systems, Inc.*, id.

Since a unit limited to the Employer's bus drivers, spare drivers, and mechanics does not constitute a unit appropriate for bargaining and the Petitioner is unwilling to proceed to an election with respect to a different unit, I shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by Friday, June 17, 2005. You may also file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: www.nlr.gov.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
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National Labor Relations Board
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10 Causeway Street, Sixth Floor
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Dated at Boston, Massachusetts
this 3rd day of June, 2005.

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